IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.MC.No. 8532 of 2001

CRA.418/2000 of SESSIONS COURT, THRISSUR
CRL.M.P. NO. 10122/99 IN CRIME NO. 354/1999 OF JFCM CHALAKUDY.

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PETITIONER/APPELLANT/PETIITONER:

M/S. ORMA GRANITE PALACE,
ANAMALY
REPRESENTED BY ITS MANAGING PARTNER LIJO JOSEPH

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PRAKASH PUTHIADAM
SRI.MARKOSE THOMAS
SRI.ROSHIN IPE JOSEPH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. ASHOKAN, S/O. KUTTIKANARAN, ANTHAM VEETTIL
MUNNIYOOR VILLAGE,
TIRURANGADI TLAUK
MALAPPURAM DIST.

3. MOHAMMED KOYA, CHEMMENPADAM HOUSE
KALLAMBARA, FEROKE, CALICUT.

4. YOONUS SALIM, AYSHA MANZIL, VALIMUKKU
MALAPPURAM DIS.

BY PUBLIC PROSECUTOR MR. AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10-8-2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 6436/2001 IN CRL.M.C.NO. 8532/2001-B

DISMISSED.

10-8-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.M.C.NO.8532 OF 2001-B

DATED THIS THE 10TH AUGUST 2007

ORDER

The petitioner in M.C. has sought for setting aside the orders of the courts below in C.M.P.Nos.10122/1999 and 10524/1999 in Crime No. 354/1999 of the Judicial First Class Magistrate, Chalakudy and that of the Sessions Judge in Crl.A.No.418/2000 over the order in the C.M.P. It is the case of the petitioner that it is a firm dealing in marbles and granites and that a sum of Rs.8,15,000/- when it was being taken to Bangalore from its office at Angamaly was seized by the police at Chalakudy and a case was registered under Sections 41(1)(d) and 102 Cr.P.C. Subsequently a final report was filed dated 6-8-1999 seeking to refer the case as no offence has been detected on investigation . The petitioner had applied under Section 452 Cr.P.C. claiming the amount. The trial court disposed of the above application after considering the evidence adduced by PWs.

1 to 3. The Income-tax authorities had also filed application claiming the amount. The lower court dismissed both the applications filed by the petitioner and by the In come-tax department and ordered that the amount be confiscated and credited to the account of the Government. The appellate court set aside the order of the lower court and remanded the matter to the court below for providing a further opportunity to establish their claim over the money seized. It appeared to the lower appellate court that the records produced , i.e. Ext.P1 series and Ext.P2, books of accounts, registers etc. did not exactly establish that the entire amount, i.e.Rs.8,15,000/- belonged to the petitioner. The lower appellate court is of opinion that at first it has to be decided whether the application would lie under which of the Sections i.e. Ss.451, 452 or S.467 Cr.P.C. and then decide the matter.

2. I find that the evidence of the witnesses examined brings out the fact that the amount belonged to the petitioner and that the same was despatched to Bangalore through PW3, one of the Directors of C.P. Marbles, Bangalore who according to the

petitioner is one of the suppliers of the petitioner firm of Marbles etc. According to the witnesses of the petitioner, the amount was carried in cash as they could not take out D.D. in time and that the amounts are due to the firm of which PW3 is a Director and certain other firms in and around Bangalore from whom the petitioner has purchased marbles, granites etc. The only case set up by the police is that the amount represented unaccounted money belonging to the petitioner firm. It is also noted in the order of the lower appellate court that the Income-tax authorities have not filed any appeal over the order of the Magistrate. The Magistrate has relied on Section 161 Cr.P.C. statements of some of the witnesses who were not examined in the above proceedings, that the amounts represented the money collected from different outlets of the petitioner. I find that once a refer report has been filled, there is no relevance for the statements recorded under Section 161 Cr.P.C. Even otherwise there is no dispute as to the ownership of the amounts that it belonged to the petitioner firm. In the circumstances, and in view of the fact that the crime stands referred, I find that the amount can only

be released to the petitioner. In the absence of any crime registered in existence, there was no scope for any further determination by the Magistrate as to the ownership of the amount. In the circumstances, the orders of both the courts below are set aside. The Judicial First Class Magistrate, Chalakudy is directed to release the amount forthwith to the petitioner firm. The Crl. revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.M.C.NO. 8532 OF 2001
ORDER

10-8-2007